IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

CRL.A.No. 934 of 2003(A)

C.C.NO.71/98 OF JFCM-II, NEDUMANGADU

APPELLANT: COMPLAINANT

C.SASI, SAVITHRI COMPLEX,
KELTRON JUNCTION, KARAKULAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: ACCUSED
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1. M.VELU, TYPIST, NORK DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. STATE OF KERALA REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl. A.No.934 of 2003-A

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Dated this the 21st day of November, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.71/1998 in the file of the Judicial Magistrate of the First Class-II, Nedumangadu, with respect to the proceedings initiated under Section 138 of the Negotiable Instruments Act, in which the accused stands acquitted.

2. It is the case of the complainant that the accused borrowed a sum of Rs.79,000/- and when demanded back issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P8. Defence examined DWs.1 and 2 and got marked Ext.D1.

4. The defence suggestion put in the cross-examination of PW.1 is that he borrowed a sum of Rs.10,000/- from one Mohanan Nair and at that time issued a blank cheque which has been converted incorporating the amount and proceedings initiated by the complainant with whom he

had no transactions. PW.2, the Assistant Treasury Officer has testified that there were no funds in the account of the accused to honour the cheque. DW.1 is the accused who has denied the transaction with PW.1. DW.2, the Assistant Director of State Forensic Science Laboratory has testified with respect to Ext.D1 expert report wherein the finding is that the original figure 700 has been altered to 79,000. The overwritings in Ext.P1 cheque is patent. Nothing was brought out to discredit the version of the handwriting expert. The contention of the appellant is that the accused has no case of material alteration but his case is that he had borrowed a sum of Rs.10,000/- from Mohanan Nair and that the same was repaid. It is also pointed out that when DW.1 deposed, his version is that the amount of Rs.10,000/- was borrowed from one Prem Kumar and that the amount was repaid and the cheque has been misused by the complainant. I find that the above contention has been considered by the court below. All the same, I find that it is a clear case of material alteration. As already noted above, it is patent from the very look of the impugned cheque that the figure has been altered. Hence, I find that the complainant could not establish beyond reasonable doubt the offence alleged. No interference is called for in the order of the court below. The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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